

107TH CONGRESS
2D SESSION

S. 3036

To establish a commission to assess the performance of the civil works functions of the Secretary of the Army.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2002

Mr. DASCHLE (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To establish a commission to assess the performance of the civil works functions of the Secretary of the Army.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corps of Engineers
5 River Stewardship Independent Investigation and Review
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) COMMISSION.—The term “Commission”
10 means the Corps of Engineers River Stewardship

1 Independent Investigation and Review Commission
2 established under section 3(a).

3 (2) INDIAN TRIBE.—The term “Indian tribe”
4 has the meaning given the term in section 4 of the
5 Indian Self-Determination and Education Assistance
6 Act (25 U.S.C. 450b).

7 (3) SESSION DAY.—The term “session day”
8 means a day on which both Houses of Congress are
9 in session.

10 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

11 (a) IN GENERAL.—As soon as practicable after the
12 date of enactment of this Act, the President shall establish
13 a commission to be known as the “Corps of Engineers
14 River Stewardship Independent Investigation and Review
15 Commission”.

16 (b) MEMBERSHIP.—

17 (1) IN GENERAL.—The Commission shall be
18 composed of not to exceed 22 members, and shall in-
19 clude—

20 (A) individuals appointed by the President
21 to represent—

- 22 (i) the Department of the Army;
23 (ii) the Department of the Interior;
24 (iii) the Department of Justice;
25 (iv) environmental interests;

- 1 (v) hydropower interests;
- 2 (vi) flood control interests;
- 3 (vii) recreational interests;
- 4 (viii) navigation interests;
- 5 (ix) the Council on Environmental
- 6 Quality; and
- 7 (x) such other affected interests as
- 8 are determined by the President to be ap-
- 9 propriate;

10 (B) 6 governors from States representing
 11 different regions of the United States, as deter-
 12 mined by the President; and

13 (C) 6 representatives of Indian tribes rep-
 14 resenting different regions of the United States,
 15 as determined by the President.

16 (2) DATE OF APPOINTMENTS.—The appoint-
 17 ment of a member of the Commission shall be made
 18 not later than 180 days after the date of enactment
 19 of this Act.

20 (c) TERM; VACANCIES.—

21 (1) TERM.—A member shall be appointed for
 22 the life of the Commission.

23 (2) VACANCIES.—A vacancy on the Commis-
 24 sion—

1 (A) shall not affect the powers of the Com-
2 mission; and

3 (B) shall be filled in the same manner as
4 the original appointment was made.

5 (d) INITIAL MEETING.—Not later than 30 days after
6 the date on which all members of the Commission have
7 been appointed, the Commission shall hold the initial
8 meeting of the Commission.

9 (e) MEETINGS.—The Commission shall meet at the
10 call of the Chairperson.

11 (f) QUORUM.—A majority of the members of the
12 Commission shall constitute a quorum, but a lesser num-
13 ber of members may hold hearings.

14 (g) CHAIRPERSON AND VICE CHAIRPERSON.—

15 (1) IN GENERAL.—The President shall select a
16 Chairperson and Vice Chairperson from among the
17 members of the Commission.

18 (2) NO CORPS REPRESENTATIVE.—The Chair-
19 person and the Vice Chairperson shall not be rep-
20 resentatives of the Department of the Army (includ-
21 ing the Corps of Engineers).

22 **SEC. 4. INVESTIGATION OF CORPS OF ENGINEERS.**

23 Not later than 2 years after the date of enactment
24 of this Act, the Commission shall complete an investiga-
25 tion and submit to Congress a report on the management

1 of rivers in the United States by the Corps of Engineers,
2 with emphasis on—

3 (1) compliance with environmental laws in the
4 design and operation of river management projects,
5 including—

6 (A) the Fish and Wildlife Coordination Act
7 (16 U.S.C. 661 et seq.);

8 (B) the Endangered Species Act of 1973
9 (16 U.S.C. 1531 et seq.); and

10 (C) the National Environmental Policy Act
11 of 1969 (42 U.S.C. 4321 et seq.);

12 (2) compliance with the cultural resource laws
13 that protect Native American graves, traditional cul-
14 tural properties, and Native American sacred sites in
15 the design and operation of river management
16 projects, including—

17 (A) the National Historic Preservation Act
18 (16 U.S.C. 470 et seq.);

19 (B) the Archaeological Resources Protec-
20 tion Act of 1979 (16 U.S.C. 470aa et seq.);

21 (C) the Native American Graves Protection
22 Act and Repatriation Act (25 U.S.C. 3001 et
23 seq.);

24 (D) Executive Order 13007 (61 Fed. Reg.
25 26771; relating to Indian sacred sites);

1 (E) identification of opportunities for de-
2 veloping tribal cooperative management agree-
3 ments for erosion control, habitat restoration,
4 cultural resource protection, and enforcement;

5 (F) review of policy and guidance regard-
6 ing nondisclosure of sensitive information on
7 the character, nature, and location of tradi-
8 tional cultural properties and sacred sites; and

9 (G) review of the effectiveness of govern-
10 ment-to-government consultation by the Corps
11 of Engineers with Indian tribes and members of
12 Indian tribes in cases in which the river man-
13 agement functions and activities of the Corps
14 affect Indian land and Native American natural
15 and cultural resources;

16 (3) the quality and objectivity of scientific, envi-
17 ronmental, and economic analyses by the Corps of
18 Engineers, including the use of independent review-
19 ers of analyses performed by the Corps;

20 (4) the extent of coordination and cooperation
21 by the Corps of Engineers with Federal and State
22 agencies (such as the United States Fish and Wild-
23 life Service) and Indian tribes in designing and im-
24 plementing river management projects;

1 (5) the extent to which river management stud-
2 ies conducted by the Corps of Engineers fairly and
3 effectively balance the goals of public and private in-
4 terests, such as wildlife, recreation, navigation, and
5 hydropower interests;

6 (6) whether river management studies con-
7 ducted by the Corps of Engineers should be subject
8 to independent review;

9 (7) whether river planning laws (including regu-
10 lations) should be amended; and

11 (8) whether the river management functions of
12 the Corps of Engineers should be transferred from
13 the Department of the Army to a Federal civilian
14 agency.

15 **SEC. 5. POWERS.**

16 (a) HEARINGS.—The Commission may hold such
17 hearings, sit and act at such times and places, take such
18 testimony, and receive such evidence as the Commission
19 considers advisable to carry out this Act.

20 (b) INFORMATION FROM FEDERAL AGENCIES.—

21 (1) IN GENERAL.—The Commission may secure
22 directly from a Federal department or agency such
23 information as the Commission considers necessary
24 to carry out this Act.

1 (2) PROVISION OF INFORMATION.—On request
2 of the Chairperson of the Commission, the head of
3 the department or agency shall provide the informa-
4 tion to the Commission.

5 (c) POSTAL SERVICES.—The Commission may use
6 the United States mails in the same manner and under
7 the same conditions as other departments and agencies of
8 the Federal Government.

9 (d) GIFTS.—The Commission may accept, use, and
10 dispose of gifts or donations of services or personal prop-
11 erty.

12 **SEC. 6. COMMISSION PERSONNEL MATTERS.**

13 (a) COMPENSATION OF MEMBERS.—

14 (1) NON-FEDERAL EMPLOYEES.—A member of
15 the Commission who is not an officer or employee of
16 the Federal Government shall be compensated at a
17 rate equal to the daily equivalent of the annual rate
18 of basic pay prescribed for level IV of the Executive
19 Schedule under section 5315 of title 5, United
20 States Code, for each day (including travel time)
21 during which the member is engaged in the perform-
22 ance of the duties of the Commission.

23 (2) FEDERAL EMPLOYEES.—A member of the
24 Commission who is an officer or employee of the
25 Federal Government shall serve without compensa-

1 tion in addition to the compensation received for the
2 services of the member as an officer or employee of
3 the Federal Government.

4 (b) TRAVEL EXPENSES.—A member of the Commis-
5 sion shall be allowed travel expenses, including per diem
6 in lieu of subsistence, at rates authorized for an employee
7 of an agency under subchapter I of chapter 57 of title
8 5, United States Code, while away from the home or reg-
9 ular place of business of the member in the performance
10 of the duties of the Commission.

11 (c) STAFF.—

12 (1) IN GENERAL.—The Chairperson of the
13 Commission may, without regard to the civil service
14 laws (including regulations), appoint and terminate
15 an executive director and such other additional per-
16 sonnel as are necessary to enable the Commission to
17 perform the duties of the Commission.

18 (2) CONFIRMATION OF EXECUTIVE DIREC-
19 TOR.—The employment of an executive director shall
20 be subject to confirmation by the Commission.

21 (3) COMPENSATION.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), the Chairperson of the Com-
24 mission may fix the compensation of the execu-
25 tive director and other personnel without regard

to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(B) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(d) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—

(1) IN GENERAL.—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(2) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated to carry out
3 this Act \$5,000,000 for each of fiscal years 2003 through
4 2005, to remain available until expended.

5 **SEC. 8. TERMINATION OF COMMISSION.**

6 The Commission shall terminate on the date on which
7 the Commission submits the report to Congress under sec-
8 tion 4(a).

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